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IN THE

Supreme Court of the United States

October Term, 1959

No. 152

THOMAS W. NELSON,

Petitioner,

vs.

COUNTY OF LOS ANGELES, ET AL.,

Respondents.

ARTHUR GLOBE,

Petitioner,

vs.

COUNTY OF LOS ANGELES, ET AL.,

Respondents.

On Writs of Certiorari to the District Court of Appeal of the State of California, Second Appellate District, Division One

BRIEF FOR PETITIONERS

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Citations to Opinions Below

No opinion was issued by the Superior Court of the State of California in and for the County of Los Angeles, in which the cases originated. The opinions of the District Court of Appeal in the *Nelson* and *Globe* cases respectively (R. 133, 185) are reported at 163 A. C. A. 668, 329 P. (2d) 978; and 163 A. C. A. 679, 329 P. (2d) 971. The orders of the Supreme Court of California denying petitioners' petitions for hearings in that court, without opinion but with three of seven judges dissenting, are not reported and appear at R. 159 and R. 214.

Jurisdiction

Petitioners' petitions to the Supreme Court of California for hearings in that court after judgments by the District Court of Appeal, were denied by orders of the California Supreme Court filed on November 12, 1958 in the *Globe* case (R. 214) and November 13, 1958 in the *Nelson* case (R. 159). A joint petition for writs of certiorari to the District Court of Appeal and motions for leave to proceed *in forma pauperis* were filed on February 9, 1959, and were granted on June 29, 1959. This Court has jurisdiction under 28 U. S. C. 1257(3).

Statutory and Constitutional Provisions Involved

California Government Code, Section 1028.1 (Added Cal. Stats. 1953, c. 1646, p. 3367, Section 3, as amended Cal. Stats. 1957, c. 2106, p. 3731, Section 1):

> "It shall be the duty of any public employee who may be subpoenaed or ordered by the governing body of the State or local agency by which such employee is employed to appear before such governing body, or a committee or sub-committee thereof, or by a duly authorized committee of the Congress of the United States, or of the legislature of this State, or any subcommittee of any such committee, to appear before such committee or subcommittee, and to answer under oath a question or questions propounded by such governing body, committee or subcommittee, or a member or counsel thereof, relating to:
>
> (a) Present personal advocacy by the employee of the forceful or violent overthrow of the Government of the United States or of any state.
>
> (b) Present knowing membership in any organization now advocating the forceful or violent overthrow of the Government of the United States or of any state.

(c) Past knowing membership at any time since October 3, 1945, in any organization which, to the knowledge of such employee, during the time of the employee's membership advocated the forceful or violent overthrow of the Government of the United States or of any state.

(d) Questions as to present knowing membership of such employee in the Communist Party or as to past knowing membership in the Communist Party at any time since October 3, 1945.

(e) Present personal advocacy by the employee of the support of a foreign government against the United States in the event of hostilities between said foreign government and the United States.

Any employee who fails or refuses to appear or to answer under oath on any ground whatsoever any such questions so propounded shall be guilty of insubordination and guilty of violating this section and shall be suspended and dismissed from his employment in the manner provided by law.'"[1]

The federal statute and the House of Representatives' resolution with respect to the authority of the Committee on Un-American Activities of the House of Representatives, as well as the supremacy clause of Article VI of the United States Constitution and the First, Fifth, and Fourteenth Amendments to the United States Constitution, are also involved herein and are set forth in relevant part in the Appendix to this brief.

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[1] At the time of petitioners' discharges, before the 1957 amendments, the date in subsections (c) and (d) was September 10, 1948, and subsection (e) was not in the statute.

Questions Presented

In their appearances before the Committee on Un-American Activities of the House of Representatives, the petitioners refused to answer certain questions on the grounds of the First and Fifth Amendments to the United States Constitution. The issues presented are:

1. Whether the California statute providing for the discharge of any public employee who refuses on any ground whatsoever to answer questions on specified subjects before a committee of the United States Congress, on its face and as here applied to petitioners, is arbitrary and violates the due process guarantee of the Fourteenth Amendment to the United States Constitution.

2. Whether the California statute violates the Federal supremacy principle of Article VI of the Constitution, the First Amendment, the Fifth Amendent, and both the privileges or immunities and due process clauses of the Fourteenth Amendment, in that it was here applied to authorize petitioners' discharges from employment because they invoked their rights under the First and Fifth Amendments in their appearances before a Congressional committee.

3. Whether the Court below erred in holding that the Committee on Un-American Activities of the House of Representatives acted in an authorized manner in asking the questions petitioners refused to answer.

STATEMENT OF THE CASES

1. Petitioner Nelson's Employment and Discharge

Nelson was employed by the Los Angeles County Department of Charities on April 1, 1952 as a social worker; became a permanent employee in the position of medical social worker on June 16, 1953; and continued in that position until his discharge on May 2, 1956 (R. 107, 113; Findings of Superior Court, R. 123). In his applications for County employment, he answered all questions asked by the County, informing the County, among other things of his discharge from two previous government positions and the reasons therefor (R. 63, 73-74, 87-88). When he was employed in 1952, he also signed County and State loyalty oaths (R. 108, 114),[1] and stated when he was interviewed with respect to his affiliations that he was against *all* Communistic principles" (R. 58-59; italics in original report of interview); on September 7, 1954 he was asked in connection with his employment whether he was a member of

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[1] The oath established by the County of Los Angeles provided for the employee to swear that he did not at the time of taking the oath, and that he would not during his employment, advocate overthrow of the government and would not become a member of an organization so advocating; he also had to disclose whether he was, at the time of taking the oath or had been at any time since December 7, 1941, a member of any organization so advocating; finally, employee had to state whether or not he had ever been a member of, or directly or indirectly supported or followed, any of over 100 specified organizations. See *Parker v. County of Los Angeles*, 338 U. S. 327, 333-337, where the County oath is set forth. The oath imposed by the State on all public employees provides that the affiant does not advocate, and is not a member of any organization advocating, overthrow of the government and that he will not so advocate or become a member of such an organization during his term of employment; and it requires him to list any such organization to which he has belonged during the 5 preceding years. See California Constitution Art. 20, Sec. 3. Prior to the constitutional amendment, the same oath provision was incorporated in California Government Code, Section 3103.

the Communist Party and answered, "No" (R. 108, 114). In January 1956 information on his loyalty was reviewed in the office of the County sheriff (R. 96).[1]

After Nelson's notification on April 4, 1956, by the County of his duty to testify before the Committee on Un-American Activities of the United States House of Representatives if he were called before it, and of his liability to discharge in the event he failed to do so (R. 97, 101), Nelson appeared pursuant to subpoena at a hearing of a subcommittee of the House Committee, on April 20, 1956 (R. 21). As to the purpose of the hearings, the chairman of the subcommittee had stated at their opening four days earlier that the hearing would relate in part to a section of the Communist Party reputedly composed of musicians and to their activities in the Independent Progressive Party (R. 18); that the subcommittee would question a former Soviet intelligence officer on control of the arts in the Soviet Union and present Soviet policy (R. 18); and that "In the course of this investigation Communist Party activities of other individuals in the field of labor, business and government have come to the attention of the staff, and will also be the subject of investigation and of this hearing" (R. 19). Nelson, while answering some questions, refused to answer those relating to his discharges from previous government employment, of which he had already notified the County (see *supra*, preceding paragraph), and relating to Communist Party membership; he objected to these questions on grounds of the First and Fifth Amendments to the United States Constitution (R. 24-43).

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[1] The County had appointed a committee of county officials to supervise its "loyalty check program," and had authorized the committee to use the sheriff's office to obtain additional information on specific cases. See county directive in transcript of record, *Steiner v. County of Los Angeles*, No. 50, Oct. Term 1949, p. 17.

On May 2, 1956, Nelson was notified that effective that date he was discharged from his position pursuant to Government Code Section 1028.1, because of his refusal to answer questions before the "Committee on Un-American Activities, a duly authorized committee of the Congress of the United States" (R. 114-117; Findings of Superior Court, R. 124). The Civil Service Commission of Los Angeles County held a hearing on Nelson's appeal from his discharge, on June 11, 1956 (R. 1). The evidence consisted of a series of stipulations that he had been employed by the County, had signed the State and County loyalty oaths, had answered the County's question as to membership in the Communist Party, had been served with notice as to his duty under Government Code Section 1028.1 to answer questions before the House Committee, and had been subpoenaed and questioned before the House Committee (R. 2-3). The evidence also included the transcript of the opening of the House Committee's hearings and of Nelson's testimony before the Committee; and Nelson's personnel file, containing the report of his interview by the County on his affiliations as well as his employment applications and the ratings of his work (R. 2-6). Thereafter, the County Civil Service Commission, reciting the stipulated facts and Nelson's refusals to answer questions before the House Committee on grounds of the First and Fifth Amendments to the United States Constitution, concluded that Nelson was guilty of violating Government Code Section 1028.1 and that his discharge was therefore justified (R. 103-106; see Findings of Superior Court, R. 124-125).

2. Petitioner Globe's Employment and Discharge

Globe was employed as a temporary employee by the Los Angeles County Department of Charities in the position of social-worker from March 28, 1955 continuously until his discharge on May 2, 1956 (R. 166, 172; Findings of

Superior Court, R. 180). In 1955, he took the State Loyalty Oath (R. 167, 176) described above, note 1, page 5. In March 1956, by reason of his satisfactory completion of a year of service and his grade on an examination which was more than satisfactory, Globe became eligible for permanent appointment (R. 167, 176).

Globe appeared in answer to subpoena at hearings of a subcommittee of the Committee on Un-American Activities of the House of Representatives on April 17, 1956 (R. 159, 172-173). While answering some of the questions asked him, Globe refused to answer others which related to a group at the University of Southern California purportedly known as the John Reed Club and to membership in the Communist Party (R. 162-164). He objected to these questions on the grounds of the First and Fifth Amendments to the United States Constitution (R. 162-164; Findings of Superior Court, R. 180). On May 2, 1956, Globe was notified that he was discharged on the ground of his refusal to answer questions before the House Committee (R. 177-179; Findings of Superior Court, R. 180). The County Civil Service Commission refused Globe's request for a hearing on his discharge (Findings of Superior Court, R. 181).

3. Proceedings in the Courts Below

Nelson and Globe each petitioned for a writ of mandate in the Superior Court of California demanding his reinstatement to his position and reimbursement for loss of pay on the ground that his discharge was unconstitutional under both the State and Federal Constitutions (R. 106, 165). The Superior Court upheld Nelson's discharge but invalidated Globe's, distinguishing the two cases on the basis that Nelson had, and Globe had not, been accorded a hearing by the County Civil Service Commission (R. 121-122, 125, 181-182).

The District Court of Appeal affirmed the Superior Court's determination as to Nelson (R. 133-140) and reversed as to Globe (R. 187-198), thus upholding both discharges under California Government Code Section 1028.1. The Court of Appeal reasoned that Nelson's discharge conformed to the requirements of the due process guarantee of the Fourteenth Amendment on the basis largely of his hearing before the County Civil Service Commission (R. 134-138). However, it concluded that the due process guarantee did not require such a hearing in the case of Globe because he had the status of a temporary employee under the County civil service regulations (R. 192-197).

Interpreting this Court's decision in *Watkins* v. *United States*, 354 U. S. 178, the Court of Appeal further held that the House Committee acted in an authorized manner in asking the questions petitioners refused to answer (R. 139, 198).

The Supreme Court of California, without opinion but with three of the seven judges dissenting, refused petitioners' respective petitions for hearings in that court (R. 159, 214).

Summary of Argument

I

The court below determined the constitutionality of the discharge of petitioner Nelson as if he had been discharged for his refusal to answer questions before the Congressional committee plus his failure to explain his reasons for his refusal in his hearing before the County Civil Service Commission. The record shows that Nelson was in fact discharged on the sole ground of his refusal to answer on constitutional grounds before the Congressional committee, and the issue before this Court in his case as well as petitioner Globe's is the constitutionality of a discharge on this basis.

A. While we concede arguendo that the State has a legitimate interest in determining the loyalty of its employees, petitioners' discharges had no relation to this objective. *Slochower* v. *Board of Education*, 350 U. S. 551, establishes that a discharge solely because of a refusal on constitutional grounds to testify before a Congressional committee cannot be deemed related to the State's interest in determining the loyalty and fitness of its employees, and that discharges like petitioners' are therefore arbitrary and violations of due process. Petitioners' discharges could only be justified on the basis of the State's objective of determining fitness if an objection to testifying before a Congressional committee on Federal constitutional grounds were evidence of disloyalty. But it is indisputably established by this Court's decisions that reliance on the Constitution cannot be treated as evidence of guilt.

B. If Nelson's discharge had been based as the court below indicated, on his refusal to answer before the Congressional committee plus his failure to explain the reasons for such refusal at the County Civil Service Commission hearing, his discharge nevertheless would have violated due process. In the first place, Nelson was in no way informed or notified that the purpose of the hearing was that which thereafter was attributed to it by the court; that is, to accord him an opportunity to explain his reasons for his refusals to answer before the Congressional committee. Furthermore, the court's description of the employee's duty at the hearing is so vague that it would not have given Nelson adequate information even if it had been conveyed to him. It would violate due process for Nelson to be deprived of his employment for a failure to do an act which he had never been informed was required of him or of which he had been informed with great ambiguity. The due process guarantee requires that the State inform the employee clearly of his purported obligation, so that he has a choice of whether to comply or suffer loss of em-

ployment. Furthermore, in that the court below requires the employee to establish loyalty on an undefined basis without any disclosed charges, it imposes an unfair obligation, again violative of due process.

Finally, however the reasons and the proof the employee is to offer might be defined, it is the essence of the interpretation of the statute by the court below that the employee's refusal to answer on constitutional grounds before a Congressional committee throws a burden on him to produce evidence to establish his fitness for employment. His invocation of his constitutional rights is not a rational ground for presuming his disloyalty, and it is unreasonable, unjustifiable and a violation of due process to impose on him on that ground the burden of proving his loyalty.

C. The due process issue as to petitioner Globe's discharge is not the question treated by the court below: whether he should have had a hearing before the County Civil Service Commission on the facts of his case; rather, the due process issue is whether the acknowledged facts furnish a reasonable ground for discharge. The principle that it is arbitrary and a violation of due process to discharge an employee for a refusal to answer on constitutional grounds before a Congressional committee, applies to petitioner Globe and invalidates his discharge despite the fact that he had the status of a temporary employee under the County civil service regulations. The deprivation inflicted on petitioner Globe by his discharge was substantial. This Court has never differentiated in requiring reasonable grounds for discharge on the basis of the particularities of classification of employees. The due process question always is whether the State has arbitrarily caused a deprivation of employment; it is irrelevant how or when the employment might otherwise have terminated.

II

A. Both the County Civil Service Commission and the court below treated as irrelevant the validity or invalidity of petitioners' objections under the First and Fifth Amendments to the questions asked by the House committee, and they thus include under the statute, and sanction, the discharge of persons who have a constitutional right to refuse to answer. Petitioners' cases must therefore be judged on the basis that they in fact had rights under the First and Fifth Amendments not to testify before the Congressional committee and that they were discharged for exercising rights granted them by the Federal constitution.

Thus, under the California statute as here applied, California coerces witnesses before Congressional committees to sacrifice their constitutional rights and to permit the consummation of any attempted violation of their rights by the committees. Furthermore, California's act has no justification from the standpoint of the legitimate State objective of determining the fitness of its employees. State action which is calculated to curtail the free exercise of Federal rights is unconstitutional. Here California, through unjustifiably interfering with the assertion and exercise of First and Fifth Amendment rights, violates those Amendments as well as the principle of Federal supremacy, and in addition the due process and privileges or immunities clauses of the Fourteenth Amendment.

B. The discharges of petitioners also violate the due process clause of the Fourteenth Amendment insofar as it embodies the protections of the First Amendment, because petitioners were discharged for their refusals to answer questions pertaining to their beliefs and associations, and the deterrent the State thus imposed on First Amendment freedoms has no justification. The act of California in discharging petitioners obviously cannot be justified on the basis of any legislative objective the Congressional committee may have had, nor were the discharges related to or based upon the State's determination of the fitness of its employees.

III

The court below erred in its view that the subject of the investigation was sufficiently defined so that its relation to the Congressional committee's authority, and the pertinence of the questions petitioners refused to answer, was clear. Because there was no apparent question under inquiry and because of the subcommittee's failure to explain the subject of the investigation and the pertinence of the questions, upon the witnesses' objections, the court below erred in its conclusion that the subcommittee complied with the ruling in *Watkins* v. *United States*, 354 U. S. 178.

ARGUMENT

POINT I

The California statute, on its face and as here applied to authorize the discharge of petitioners, violates the due process clause of the Fourteenth Amendment because it is wholly arbitrary and unreasonable.

The Cause of the Discharges and the Issue Before This Court

The issue before this Court in petitioner Nelson's case, as in petitioner Globe's, is whether it is constitutional for the State to deprive a person of his employment solely because of his refusal on constitutional grounds to answer questions asked by a committee of the United States Congress. In Globe's case, the opinion of the Court below unequivocally recognizes that the refusal before the Congressional committee was the cause of discharge (R. 187); and we submit that the same conclusion is compelled by the record in Nelson's case.

The statute under which petitioners were discharged from their employment by the County of Los Angeles prescribes, among other things, discharge of any govern-

ment employee who refuses to answer on any grounds, whatsoever questions asked by a Congressional committee relating to advocacy of overthrow of the government or membership in an organization so advocating. The County Civil Service Commission, in upholding the notice of discharge (R. 98, 100) served on petitioner Nelson, found that he had violated the statute and that his discharge was justified (R. 105-6) because he had refused " 'on the basis of the First Amendment, supplemented by the Fifth Amendment of the United States Constitution' " to answer questions before the House Committee (R. 104-105). The refusal before the Congressional committee was the only factor considered by the County Civil Service Commission; indeed, no other circumstance is mentioned in its findings and conclusions. The opinion of the Superior Court (the court of original jurisdiction) recites that the cause of Nelson's discharge was his refusal to answer questions before the House Committee on Un-American Activities (R. 118-9).[1] The District Court of Appeal, the highest court of California to pass on the discharge, gives a similar description of the County Civil Service Commission's determination that Nelson was subject to discharge (R. 133-134). At the same time, however, the Court of Appeal, like the lower court, in effect recognized that Nelson's discharge on the sole ground of his refusal to testify before the Congressional committee, would be unconstitutional, and it sought to avoid interpreting the statute as authorizing such a discharge.

Accordingly, the Court below construed the statute to require, in the case of employees with permanent civil service status like Nelson, that the County Civil Service Commission hold a hearing prior to the employee's discharge; and the Court held that Nelson's discharge was valid because he refused to answer questions asked by the subcommittee of the House Committee *and* failed at the hearing held by the County Commission to explain "his

[1] The Superior Court's findings of fact do not explicitly state the cause of discharge (see R. 123-124).

reasons, if any, for refusing to testify before the House subcommittee or matters germane thereto." (R. 135, 138.) However, the Court of Appeal at no point states that the County Commission actually grounded Nelson's discharge on anything that occurred or failed to occur at the Commission hearing; in effect its opinion states that his alleged "failure to explain" *could* have been a ground for discharge.

This Court, however, does not determine hypothetical cases; furthermore, when there is an allegation that a Federal right has been denied, it must itself determine the components of the issue presented by the case. See *Fiske* v. *Kansas*, 274 U. S. 380, 385-6.[1] This Court's obligation to consider the grounds for petitioners' discharges that are shown by the record, notwithstanding the opinion of the Court below, is confirmed by the principle that "The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." *Securities and Exchange Comm.* v. *Chenery Corp.*, 318 U. S. 80, 87. See also *Perkins* v. *Elg*, 307 U. S. 325, 349; and see *Service* v. *Dulles*, 354 U. S. 363, 372.[2] Here it is manifest from the record that Nelson's discharge, like Globe's, was based solely on his refusal to testify, on constitutional grounds, before a Congressional committee; and the constitutionality of discharges on that basis is the issue before this Court.

In Section A of this Point, we shall consider the constitutionality under the due process clause of a discharge on this basis, without considering the special circumstance relied on by the Court below in upholding Globe's dis-

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[1] See also *Chambers* v. *Florida*, 309 U. S. 227, 228-9; *Norris* v. *Alabama*, 294 U. S. 587, 590; *Sterling* v. *Constantin*, 287 U. S. 378 398. Cf. *Staub* v. *City of Baxley*, 355 U. S. 313, 318-320.

[2] Though the *Chenery* rule was evolved in the review of a determination by a Federal administrative agency, we submit that it is a rule of fairness and due process, requiring observance in all review proceedings.

charge—that is, that he had the status of a temporary employee under the County civil service regulations. In Section B, for the sake of a complete appraisal of the opinion of the Court below, we shall consider whether its interpretation of the California statute in Nelson's case would render it constitutional, though we do not believe this issue is truly before this Court. In Section C, we shall consider whether the circumstance that Globe was a temporary employee rendered his discharge constitutional.

A. The Discharge of County Employees, Pursuant to the California Statute, on the Ground of Their Refusal on Constitutional Grounds to Answer Questions Asked By a Congressional Committee, is Arbitrary and Unreasonable.

The court below upheld the statute and petitioners' discharges thereunder on the basis that the State can require a public employee to disclose information concerning his loyalty because it has a legitimate interest in the fitness of its employees and loyalty is a component of fitness (R. 136, 139-140). We would concede, arguendo only, that "loyalty", as reflected in belief and association, of a government employee is related to his fitness and that the State's determination of the loyalty of its employees is therefore a legitimate State objective. The issue here, however, is whether the discharges of petitioners on the basis of their refusals to answer on Constitutional grounds before the Congressional committee, have a reasonable relation or indeed any relation, to the objective of determining loyalty, and whether such discharges can be justified by this objective.

Petitioners' discharges had no relation to the State's determination of their loyalty. Thus, neither the County Civil Service Commission in validating the discharges, nor the Court of Appeal in upholding them, even considered whether the *County* required petitioners' answers to the House committee's questions in order to determine petitioners' loyalty. Indeed, before the committee hearing

and thus before the County could even have known the committee's questions, it notified Nelson he would be discharged if he refused to answer them (R. 97, 101-102). That this statute and these discharges were not related to the County's determination of employee fitness is highlighted by the fact that the County had its own elaborate procedure for determining loyalty,[1] including oaths, questionnaires, and interviews as to beliefs and associations; and the applicable California loyalty procedure had in fact been applied to each petitioner (*supra*, pp. 5-6, 8).

Thus it is clear that the discharges of petitioners cannot be justified on the ground of the State's interest in determining their loyalty. This conclusion and the unconstitutionality of California's action is squarely established by *Slochower* v. *Board of Education*, 350 U. S. 551. The *Slochower* decision, applying the ruling in *Weiman* v. *Updegraff*, 344 U. S. 183, that the State cannot arbitrarily discharge its employees, holds that discharge solely because of invocation of the Fifth Amendment privilege before a Congressional committee is arbitrary. The rulings in *Beilan* v. *Board of Public Education*, 357 U. S. 399, and *Lerner* v. *Casey*, 357 U. S. 468, confirm, rather than in any way detract from, the *Slochower* holding. In both *Beilan* and *Lerner* the discharges were upheld because they arose from the *State's* inquiry into the loyalty of its employees; in neither was there a refusal to testify on the basis of Federal rights before a Federal body; and in both opinions the *Slochower* decision was explicitly confirmed. See especially *Beilan*, 357 U. S. at pp. 408-9; *Lerner*, 357 U. S. at pp. 479.

Petitioners' discharges could only be considered related to the State's purpose of determining fitness if an objec-

[1] See Horowitz, *Los Angeles City and County Loyalty Programs*, 5 Stanford Law Review 233 (1953).

tion to testifying before a Congressional committee on Federal constitutional grounds were evidence of disloyalty. But this Court has repeatedly held that a witness' invocation of his constitutional rights cannot be taken as evidence of guilt, nor can it be called subversive to rely on the Constitution. See *Quinn* v. *United States*, 349 U. S. 155, 162, 164; *Grunewald* v. *United States*; 353 U. S. 391, 421; *Koenigsberg* v. *State Bar of California*, 353 U. S. 252, 270. If petitioners' discharges were upheld, it would mean that *any* reliance on the Constitution could automatically be treated as suspect, for California regards it as entirely irrelevant whether petitioners' constitutional objections before the House Committee were valid or invalid, made in good faith or bad. It may be noted that the statute was passed prior to this Court's emphasis on the observance of constitutional rights and limitations by Congressional committees; and it may have been the premise of the legislators that an assertion of constitutional rights before a committee was in itself suspect.

As a final point of arbitrariness, it is to be noted that due process would in any event dictate th[redacted]e County weigh together, if it sought to make a loyalty determination, the information in its possession about its employees; here California made no such evaluation, basing itself instead solely on petitioners' refusals to answer before the Congressional committee.

Unrelated to the County's legitimate objective of determining the fitness of its employees and to its procedures for making such determinations, the California statute, as applied to petitioners, was related only to coercing them to forego their constitutional objections to testifying before the Congressional committee. Certainly the State has no legitimate interest in forcing employees to waive Federal constitutional rights before a Federal body, and indeed such coercion by the State is itself unconstitutional (see Point II below).

The Court of Appeal, in accordance with the statute, speaks of petitioners' objections to testifying before the House committee as "insubordination" (R. 140). But since there is no justification in terms of the State's legitimate objectives for its discharging its employees on the ground of their constitutional objections to testifying before a Congressional committee, justification cannot be created by the semantic device of saying the employees have a "duty" to testify and then terming violation of "the duty" insubordination.

Finally, we must note the extent of the injury California has inflicted on petitioners. Not only have petitioners been deprived of their present means of livelihood, but they have been discharged on a basis ostensibly related to disloyalty, that will arouse suspicion and jeopardize their future employment opportunities;[1] furthermore, their discharges trench on freedom of belief and association[2] and burden and interfere with the exercise of First and Fifth Amendment rights. To justify such a deprivation and interference, more than a slight or tangential interest of the State would be required. Here the purported interest of the State—that in the fitness of its employees—is altogether lacking. While the State may promote that interest by all reasonable means, it cannot on that score justify the arbitrary measure here at issue.

B. The Interpretation Given to the California Statute By the Court Below Would Not Render Petitioner Nelson's Discharge Valid.

Though, as we have already said (*supra*, pp. 13-15), the issue does not seem to us presented to this Court by the instant facts, we shall now consider the validity of Nelson's discharge as if it had rested on the basis suggested by the court below.

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[1] Cf. *Wieman*, 344 U. S. at pp. 190-191; *Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 185 (Jackson, J., concurring); *Shurtleff v. United States*, 189 U. S. 311, 317.

[2] Cf. *Speiser v. Randall*, 357 U. S. 513, 526.

1. No Notice of Purpose of Hearing

The court below construed the statute to mean that in the case of a refusal of a permanent civil service employee like Nelson to answer questions on constitutional grounds before a Congressional committee, a hearing should be held before the County Civil Service Commission at which he should be given an opportunity to explain the reasons for his refusal and matters germane thereto; and the court held that the Commission proceeding in Nelson's case conformed with the statutory requirement. However, the court does not indicate that the employee must be in any way notified of the purpose of the hearing, and its recitation of the proceedings before the Civil Service Commission makes clear that no notification of the purpose thereafter described by the court was in any way conveyed to Nelson (See opinion of the court below, R. 134-135, and see proceedings before Civil Service Commission, R. 1-7). Thus, assuming arguendo that a refusal to answer questions asked by a Congressional committee plus a failure to explain the reasons therefor is a constitutional ground for discharge, in this case there would nevertheless be a failure of due process. For we would have the case of a person deprived of his employment for failure to do an act which he had never been informed was required of him.

Due process guarantees that the State clearly inform an individual of an obligation so that he can make a choice between satisfying it or suffering the consequence of failure. See *Flaxer* v. *United States*, 358 U. S. 147, 151; *Raley* v. *Ohio*, 360 U. S. 423; *Scull* v. *Virginia*, 359 U. S. 344, 345, 352-353; *Jordan* v. *De George*, 341 U. S. 223, 230-231. In accordance with this principle, this Court has consistently affirmed that an employee must be warned of the acts or deficiencies that would constitute grounds for discharge. See *Garner* v. *Los Angeles Board*, 341 U. S. 716, 724; *Beilan*, 357 U. S. at p. 408; *Lerner*, 357 U. S. at p. 478. Here it is apparent that Nelson had no warning that he was to explain at the hearing "his reasons, if any,

for refusing to testify before the House subcommittee or matters germane thereto"—the purpose which the Court below thereafter attributed to the hearing—and he therefore had no choice of whether to comply or suffer loss of employment.

"It goes without saying that the requirements of a fair hearing include notice of the claims of the opposing party and an opportunity to meet them."[1] *A fortiori,* due process is violated when, as in the instant case, the affected individual is not informed even of the purpose of the hearing.

2. Vagueness of Employee's Burden

Moreover, even if Nelson had been informed of the purpose of the civil service commission hearing in the terms used by the court below, the notification would have been so vague and meaningless that his discharge for failure to fulfill his supposed obligation would violate due process. See cases cited *supra,* p. 20. The opinion of the court below is wholly ambiguous as to the employee's duty at the hearing; the most it does is to indicate that several possible interpretations are incorrect. Thus the opinion shows that the "reasons" the employee is to give at the hearing and the commission is to evaluate, are not the constitutional grounds on which he has relied in refusing to testify. In Nelson's case "reasons" in this sense were apparent from the exhibits introduced at Nelson's hearing and neither the civil service commission nor the court sought to evaluate them (and see R. 138). Again, it is clear that the court below did not regard the employer's own loyalty investigation or the facts therein disclosed as relevant. For, evidence was introduced, both at the County's and Nelson's instance, before the civil

[1] *F.T.C.* v. *National Lead Co.,* 352 U. S. 419, 427. See also *De Jonge* v. *Oregon,* 299 U. S. 353, 363; *Cole* v. *Arkansas,* 333 U. S. 196, 201.

service commission showing that he had undergone a loyalty investigation by the County and that he had answered all questions asked him in that investigation, taken all required oaths, etc.; but the production of this evidence was ignored both by the civil service commission and the court.

All that can be said is that the court below seems to require the employee to establish loyalty on some undefined basis without any disclosed charges. The fact that Nelson was not questioned by the commission was regarded as irrelevant (see opinion of court below, R. 138); Nelson was to initiate on his own, in some undisclosed way, the proof of his loyalty. For the State to discharge an employee for failing to meet such an indefinite and unfair obligation would violate due process. Compare *Greene* v. *McElroy*, 360 U. S. 474; *Speiser* v. *Randall*, 357 U. S. 513, 526.

The court below refers to an opinion of the California Supreme Court in which it reviewed a discharge under a California statute similar to the instant one. There too the employee had been discharged solely on the basis of his refusal to testify before a Congressional committee. See *Board of Education* v. *Mass*, 47 Cal. 2d 494, 304 P. 2d 1015. The California Supreme Court remanded the case for a hearing before the Board of Education saying: " 'Factors of the type mentioned in the *Slochower* decision should, of course, govern the determination as to the sufficiency of the employee's reasons' " (R. 137). If and how this ruling was applied on remand does not appear from the reported decisions. In any event, in the instant case the Civil Service Commission did not consider such factors nor did the court below give any meaningful application to this formula. Instead, the court gave a purely *pro forma* application to the *Slochower* requirement that the employer must use a reasonable basis for evaluating fitness: the court below has treated the employer's holding of a hearing following a refusal to testify before a Congressional com-

mittee, as sufficient in itself, regardless of its nature, to validate the discharge.

The difficulty arises from a statute which prescribes a wholly arbitrary ground for discharge—that is, a refusal to testify on any ground whatsoever before a Congressional committee—and the attempt to interpret it so that it will conform with the constitutional requirement of reasonableness. It seems impossible to construe such a statute in conformity with due process; in any event, the reconciliation has not been here accomplished.

3. Arbitrariness of Presumption

However the reasons and the proof the employee is to offer may be defined, it is the essence of the interpretation of the statute by the court below that the employee's refusal to answer on constitutional grounds before a Congressional committee throws a burden on him to produce evidence to establish his fitness for employment. We submit that by the same token as it is unreasonable and arbitrary for the State to hold an employee's invocation of his constitutional rights before a Congressional committee to be conclusive reason for his discharge (*supra*, pp. 17-18), it is likewise unjustified and arbitrary to presume from such invocation that he is unfit and that there is a need for him to establish his loyalty. Disloyalty can neither be assumed nor presumed from the invocation of constitutional rights. Thus, it is an unreasonable and unjustifiable burden—without rational factual basis, and without justification in terms of the State's need to determine fitness—to impose on an employee, because of his refusal on constitutional grounds to testify before a Congressional committee, the burden of proving loyalty; and the statute, as interpreted by the Court below, is on this score again violative of due process. Compare *Speiser*, 357 U. S. at p. 524, and cases therein cited; *Adler* v. *Board of Education*, 342 U. S. 485, 495-496.

C. The Discharge of Petitioner Globe Was Arbitrary and a Violation of Due Process Despite the Circumstance That He Had the Status of a Temporary Employee Under County Regulations.

In Globe's case, the Court below recognized unequivocally that Globe was discharged solely because of his refusal on constitutional grounds to answer certain questions asked by the Un-American Activities Committee of the House of Representatives (R. 187-188, 190). The Court upheld his discharge on the basis that the due process guarantee did not require the County to grant him a hearing; it relied in part on the circumstance that the County Charter and regulations of the County Civil Service Commission did not provide for a hearing on the discharge of an employee who, like Globe, had not acquired permanent civil service status.

We submit the Court below misconceived the issue in limiting its attention to the question of whether Globe should or should not have had a hearing before the Civil Service Commission. There are two possible due process issues here—(1) whether the County is using an arbitrary ground of discharge, and (2) whether it is using an arbitrary procedure for determining whether that ground exists in the case of a particular employee. It is the first issue that is here involved, whereas the Court below addresses itself only to the latter. Our contention is that the ground for Globe's discharge—his refusal to testify on constitutional grounds before a Congressional committee—is arbitrary. It may be noted that there is nothing in the County Charter or Civil Service Commission regulations that is inconsistent with our position herein; they assume discharges will be predicated on grounds reasonably related to fitness, and merely regulate the method of determining whether such grounds exist.

It is established, as we have already shown, that it is arbitrary and a violation of due process for the State to discharge an employee solely because of his refusal to

testify on constitutional grounds before a Congressional committee, because such a refusal does not show disloyalty or unfitness (*supra*, pp. 17-18). This principle of due process is applicable whether the employee has temporary or permanent status under civil service laws; he suffers a substantial deprivation when he is deprived of his means of livelihood, even if he is not at the same time deprived of any additional prerequisites concomitant with permanent status.

We submit that the Court below erred in its view (R. 194) that the *Slochower* doctrine applies only to employees with permanent status. This Court held that Slochower's discharge violated due process because there had been no showing of "Slochower's continued employment to be inconsistent with a real interest of the State" (350 U. S. at p. 559). There was no thought in *Slochower* of differentiating in the application of this principle on the basis of the particularities of the classifications of employees. Our view of the meaning of *Slochower* is borne out by the fact that the opinion relies on the passage in the *Wieman* decision where this Court said: "We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory" (344 U. S. at p. 192. See *Slochower*, 350 U. S. at p. 556). At no point in *Wieman* did this Court consider the particular status or prerogatives of the employees there involved; clearly it was enough to bring into play the due process gurantee that the State was ousting a person from his employment, regardless of whether he had permanent or temporary status.

Nor in *Garner* or *Adler*,[1] in which the requirements of due process were also applied to public employment and

[1] *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Adler* v. *Board of Education*, 342 U. S. 485.

which are also considered in *Slochower* (350 U. S. at pp. 555-6), was there any consideration of the particular status of the employees under State law. And in *Garner* this Court made no distinction between temporary and permanent employment in pointing to the necessity for the City of Los Angeles to interpret its ordinance in accordance with due process (341 U. S. at p. 724).

These decisions on public employment express a principle of due process found throughout this Court's opinions. The opportunity to earn a livelihood is basic, and the State cannot arbitrarily interfere with it. The question always is whether the State is arbitrarily causing a deprivation; it is irrelevant how or when the employment might otherwise have terminated. See *Truax* v. *Raich*, 239 U. S. 33, 38; *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 185 (Jackson, J., concurring); *Bomar* v. *Keyes*, 162 F. 2d 136, 139 (C. A. 2, 1947). Here Globe's employment would have continued but for his refusal on constitutional grounds to testify before the Congressional committee; the question is whether this was an arbitrary ground for terminating it and not whether, because he was a temporary employee, there were other reasons or ways it might have been terminated.[1]

In addition to terminating his means of livelihood, it appears that Globe's discharge deprived him of the oppor-

[1] The Court below relied on *Bailey* v. *Richardson*, 182 F. 2d 46, 86 App. D. C. 248; affirmed by an equally divided Court without opinion, 341 U. S. 918 (R. 195). That case was decided on the assumption that Bailey had permanent status (182 F. 2d at p. 55); and the holding, to the effect that the due process guarantee did not apply to public employment, has indubitably been superseded by the holdings of this Court. In *Friedman* v. *Schwellenbach*, 159 F. 2d 22, 88 App. D. C. 365, cert. den. 338 U. S. 838, also cited by the Court below (R. 195), there was no holding as to the applicability of due process. The Court upheld Friedman's discharge on the basis of an administrative finding made after a hearing, that there was reasonable doubt of his loyalty.

tunity which he had earned by his work as a temporary employee, to be considered for the position of a permanent employee (*supra*, p. 8). The deprivation of this opportunity on an arbitrary basis of itself violates due process. Indeed, if Globe were not a public employee at all, and it were merely a question of denying him the opportunity to be considered for employment, the State could not arbitrarily discriminate against him.[1] Certainly this does not mean Globe or anyone else can demand that public employment be created or given him. He can be excluded from it, whether he is an incumbent or applicant, on grounds reasonably related to the State's needs; but, whether incumbent or applicant, he cannot be excluded from it arbitrarily, as he was in the instant case.

Finally, we must bear in mind that a discharge like Globe's ostensibly related to disloyalty, inflicts additional damage besides the termination of employment (discussed *supra*, p. 19); in consequence, the State's violation of the due process guarantee by its discharging him on an arbitrary ground is all the more onerous.

POINT II

The California statute as here applied is unconstitutional because it unjustifiably burdens and interferes with the exercise of First and Fifth Amendment rights.

A. Coercion Against Assertion of Constitutional Rights

The validity of the statute and California's discharge of the petitioners thereunder must be determined on the assumption that petitioners did in fact have rights under

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[1] See *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 238-9: "A State cannot exclude a person from * * * any * * * occupation * * * for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." See also *Koenigsberg* v. *State Bar*, 353 U. S. 252, 257-8; and *Wieman*, quoted *supra*, p. 25.

the First and Fifth Amendments to object to the questions they refused to answer before the Congressional subcommittee. We may note that the subcommittee itself honored petitioners' assertions of the Fifth Amendment privilege. However, we do not rely on the committee's view, nor is it necessary now to demonstrate that the Amendments were validly invoked. For, it is clear on the face of the statute that neither the civil service commission nor any other agency is to determine the validity of any invocation of constitutional rights before a Congressional committee; and the statute was so interpreted by the civil service commission and the court below. Both the Commission and the Court, treating as irrelevant the validity or invalidity of petitioners' objections under the First and Fifth Amendments, indubitably include under the statute, and sanction, the discharge of persons who have a constitutional right to refuse to answer.

Thus, petitioners' cases must be determined on the basis that they had rights under the First and Fifth Amendments not to testify before the Congressional committee and that they were discharged for exercising rights granted them by the Federal Constitution.

This Court's unanimous holding in *Terral* v. *Burke*, 257 U. S. 529, is squarely applicable to demonstrate the invalidity of California's statute as here construed and applied. There Arkansas had provided that an out-of-state corporation would lose its license to do business in Arkansas if it brought a suit in or to the Federal court, rather than the State courts. This Court held that the United States Constitution (Article III, Section 2) gave the corporation a right to resort to the Federal court and that Arkansas could not demand the waiver of the exercise of this right as a condition of the privilege of doing business in Arkansas. When the Federal Constitution confers a right, "state action, whether legislative or executive, necessarily calculated to curtail the free exercise of the right

• • • is void" (257 U. S. at p. 532). Though Article III of the Constitution, like the First and Fifth Amendments here involved, is primarily a direction to the Federal Government, an interference by the State also "violate(s) the constitutional right" because the state in the exercise of all its powers is "subject to the limitations of the supreme fundamental law" (257 U. S. at pp. 532-3). It is a violation of Federal supremacy for the State to interfere with the exercise of Federally granted rights by the withdrawal of State granted privileges. See *Castle* v. *Hayes Freight Line*, 348 U. S. 61; cf. *Frost* v. *Railroad Commission*, 271 U. S. 583, 593.

In the instant case coercion of petitioners in their relations to the Federal government not only was the effect, but also must be presumed the purpose, of the State legislation, since it did not serve the State purpose of determining the fitness of its employees (see *supra*, pp. 16-18).[1] The threat of discharge under the California statute as here applied, is clearly "calculated to curtail the free exercise of the rights" of employees under the First and Fifth Amendments just as the threat in the *Terral* case to revoke the license to do business curtailed the exercise of the Federal right to resort to Federal courts. The outmoded debate as to whether California's discharge of petitioners constitutes the loss of the right or the privilege of employment need not be assayed; for even if a "privilege", the threatened loss operates as a potent coercion. See *American Communications Assn.* v. *Douds*, 339 U. S. 382, 405, 409;

[1] Compare *Cummings* v. *Missouri*, 4 Wall. 277, 320; *Dent* v. *West Virginia*, 129 U. S. 114, 126; *United States* v. *Lovett*, 328 U. S. 303; cf. *Garner* v. *Los Angeles Board*, 341 U. S. 716, 722. Petitioners' discharges must be deemed coercive of First and Fifth Amendment rights notwithstanding the fact that in their cases the threat of discharge did not actually prevent the invocation of these rights. See *Bomar* v. *Keyes*, 162 F. 2d 136, 139 (C. A. 2, 1947, opinion by Judge Learned Hand); *Robeson* v. *Fanelli*, 94 F. Supp. 62, 69 (S. D. N. Y., 1950).

Speiser, 357 U. S. at pp. 518-519; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, 461.[1]

Here California coerces witnesses before the Congressional committee to sacrifice their constitutional rights and to permit the consummation of any attempted violation of their rights by the committee. The State aids Congressional committees in transgressing the constitutional limitations on their powers if they attempt such transgression. California does not leave the witness free to invoke his constitutional rights and to test them, if challenged, under the prescribed Federal procedure—that is, the Federal contempt statute (2 U. S. C. 192). Instead, the State penalizes the witness for the very assertion of his rights. The protection which this Court has striven to accord to the constitutional rights of witnesses before Congressional committees,[2] is thwarted by California's interference with their invocation of these rights.

By curtailing the free exercise of First and Fifth Amendment rights, without any State justification (see *supra*, p. 18), California not only violates these rights and the principle of Federal supremacy, but we submit that it also violates the due process clause of the Fourteenth Amendment insofar as it incorporates First Amendment rights, and the privileges and immunities clause of the Fourteenth Amendment.[3]

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[1] The coercive effect is obviously substantial even if the assertion of constitutional rights were only presumptive cause for discharge, as the Court below indicated (*supra*, p. 23), rather than conclusive cause.

[2] See, e.g., *Quinn* v. *United States*, 349 U. S. 155, 161-2; *Watkins* v. *United States*, 354 U. S. 178, 197.

[3] The Fifth Amendment privilege against self-incrimination, as well as the privilege of freely asserting against the Federal government all Federal constitutional rights, must be deemed part of "the privileges or immunities of citizens of the United States" which are protected against State abridgement by the Fourteenth Amendment. See *Hague* v. *C.I.O.*, 307 U. S. 496, 519, note 1 (opinion of Stone, C. J.); *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Re Kemmler*, 136 U. S. 436, 448; *Slaughterhouse Cases*, 16 Wall. 36, 79.

B. Deterrent to Free Exercise of First Amendment Rights

Finally the discharge of petitioners violated the due process clause of the Fourteenth Amendment insofar as it incorporates the protections of the First Amendment, because petitioners were discharged, without justification, for their refusals to answer questions concerning their beliefs and associations. It is again unnecessary to determine whether it was in fact a violation of the First Amendment for the Congressional subcommittee to command answers to these questions. It is sufficient to observe that if it was constitutional for the Committee to ask questions impinging on First Amendment freedoms, it was constitutional only because the interference with freedom of belief and association was outweighed by a compelling legislative objective. See *Watkins*, 354 U. S. at pp. 198-199, 205-206; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449, 463.

The act of the State of California of discharging petitioners obviously cannot be justified on the basis of any legislative objective the Congressional committee may have had. Nor was there any other justification for the discharges, from the standpoint of the State's legitimate purposes: they were not reasonably related to, or based upon, the State's determination of the fitness of its employees (see *supra*, pp. 17-18). At the same time as they lack justification, the discharges of petitioners for failure to answer questions directed at the disclosure of unpopular beliefs and associations unquestionably act as a deterrent to non-conformist expression. For, such discharges generate fear that non-conformist political expression will lead to a choice of penalties: exposing one's beliefs and associations in answer to a Congressional committee's questions, with resulting humiliation and obloquy,[1] or loss of employment for failure to answer. Thus the sanction of discharge, as here used by California, limits the exercise of the First

[1] See *N.A.A.C.P.*, 357 U. S. at p. 462; *Watkins*, 354 U. S. at pp. 197-8.

Amendment freedoms of belief, expression and association, without justification, and therefore violates the Fourteenth Amendment.

POINT III

The Court below erred in its ruling that the Committee was acting in an authorized manner in asking the questions petitioners refused to answer.

The Court below construed the California statute to mean that the validity of petitioners' discharges depended on whether the questions they refused to answer were "duly authorized" as a matter of Federal law. The Court deemed the doctrine of the *Watkins* case applicable in determining whether the questions were properly asked, but distinguished the instant cases from *Watkins* saying: "In the present situation there was no vagueness in reference to the subject matter of the inquiry or its relation to the investigative powers of the committee. Petitioner was asked directly in regard to his own communistic activities and refused to answer such inquiries" (R. 139; see R. 198).

The Court below erred, we submit, in its view that the subject of the investigation was sufficiently defined so that its relation to the Committee's authority and the relation of the questions was clear. Indeed, the subcommittee's purposes were so undefined that we submit there was no apparent "question under inquiry" at all, by which the pertinence of the questions addressed to the petitioners might be appraised. At the opening session, the chairman of the subcommittee, after reciting the general terms of the Committee's mandate (R. 17),[1] stated that the hearing would deal with a group of musicians in the Communist

[1] As to the vagueness of such a recitation, see *Watkins*, 354 U. S. at p. 209.

Party, control of the arts in the Soviet Union, and an analysis of Soviet policy as announced at the latest Congress of the Soviet Communist Party (R. 18). He then stated that the "Communist Party activities of other individuals in the field of labor, business and government" would be investigated and that there had been testimony as to the "existence of * * * Communist Party cells which operated in various government agencies at various locations throughout the country" (R. 19-20). Only the quoted parts of the chairman's statement have any relevance in the instant case, since neither petitioner had any relation to the arts or the formulation of Soviet policy.

The quoted parts of the chairman's statement were no more than a statement of what individuals would be called and what evidence had been received, rather than a statement of a subject to be investigated. And even as a description of witnesses and testimony, the statement was broad and vague. For, in referring to "government" and "government agencies" the chairman apparently was not referring to the Federal government; petitioner Globe apparently had never held or even applied for a job in a Federal agency and his questioning did not touch on Federal work (see R. 159-165). Thus the narrowest possible formulation of the intention revealed by the Committee was that it intended to call anyone suspected of any association with the Communist Party employed in any agency of any government unit in the country. It did not state the purpose or intended scope of its interrogation of these persons, nor did the actual questioning of petitioners point to a subject of inquiry (see especially R. 161-164).

Thus there is no basis for the conclusion indicated by the Court below that there was a clearly defined subject with a clear relation to the Committee's authority from which petitioners could determine the pertinence of the

questions asked them.[1] In the context of the Committee's intention to call "individuals in the field of labor, business and government" (R. 19) with no stated purpose, the calling and questioning of petitioners appeared completely aimless.

Since no subject of inquiry had "been made to appear with undisputable clarity" (*Watkins*, 354 U. S. at p. 214), the subcommittee had an obligation, particularly when petitioners objected that the questions were outside the Committee's functions (R. 24-25, 161-162), to describe clearly the subject under inquiry and the pertinence of the questions. The subcommittee did not carry out this obligation; thus the questions asked petitioners cannot be deemed within the subcommittee's authority and the Court below erred in holding that the subcommittee acted in an authorized manner in its interrogation of petitioners.

In sum, while the Court below interpreted the statute as requiring that the questions the Committee asked petitioners be "authorized" as a matter of Federal law, it erred in concluding that they were so authorized, because the subject under investigation was not apparent; the relation of the questions to the Committee's authority was consequently unclear; and the Committee failed to apprise petitioners, upon their objection, of the subject under inquiry or the pertinence of the questions.

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[1] We are assuming in this argument, but we do not concede, that both petitioners heard the chairman's opening statement. Petitioner Nelson testified four days after the opening session (see R. 16, 21), but he indicated that he was present at the initial session (R. 24). Petitioner Globe testified on the day following the opening session (R. 159), but there is no evidence he was present the preceding day (see R. 159-165).

Conclusion

For the foregoing reasons, we respectfully submit the judgment of the Court below should be reversed, and the proceedings should be remanded with directions that the California statute and the petitioners' discharges thereunder are invalid, that petitioners should be reinstated in their employment, and that they should receive whatever further relief is appropriate in view of the unconstitutionality and invalidity of their discharges.

Respectfully submitted,

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APPENDIX

Additional Constitutional and Statutory Provisions Involved

CONSTITUTION OF THE UNITED STATES

Article VI. This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land * * *.

Amendment I. Congress shall make no law * * * abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V. No person shall * * * be compelled in any criminal case to be a witness against himself * * *.

Amendment XIV. Section 1. * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law * * *.

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress.

* * * (b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

RULE XI

POWER AND DUTIES OF COMMITTEES

(1) All proposed legislation, messages, petitions, memorials, and matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively: * * *

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation * * *.

C